

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

KELVIN GOULD, #0009214

Petitioner,

v.

2:07CV544

COMMONWEALTH OF VIRGINIA,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's arrest and incarceration on the charges of two counts of inanimate object sexual penetration and one count of knowingly and intentionally exposing his genital parts. To date, petitioner's trial on the charges is pending.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Magistrate Judge filed his report recommending dismissal of the petition on January 3, 2008. By copy of the report, petitioner was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court received from petitioner on January 23, 2008, a document entitled "Magistrate Judg's [sic] Report and Recommendation on Petitioner," which is construed as objections to the report.

The Court, having reviewed the record and examined the objections filed by petitioner and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the

findings and recommendations set forth in the Report of the United States Magistrate Judge filed January 3, 2008. It is, therefore, ORDERED that the petition be DENIED and DISMISSED, based on the fact that petitioner's trial in state court has not yet occurred.

To the extent that petitioner objects to his arrest and incarceration on charges he claims to be innocent of, the objections are without merit. Until petitioner is convicted of the charges for which he is being held in custody, there is no basis upon which this Court can address any of petitioner's claims.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to petitioner.

/s/ Jerome B. Friedman
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
January 25, 2008